

REMARKS

This application has been carefully reviewed in light of the Office Action mailed May 5, 2004. To clarify various aspects of inventive subject matter, Applicant amends Claims 1, 11, 20, and 26. Applicant also introduces new Claims 29-31. Applicant respectfully requests reconsideration, further examination, and favorable action in this case.

Interview Summary

Applicant thanks Examiner Peyton for the telephone conference conducted with Applicant's representatives Charles Suh and Doug Kubehl on July 28, 2004 and for her thoughtful consideration of this case. Applicant's attorney conducted a telephone conference with Examiner Peyton on July 28, 2004. Pursuant to M.P.E.P. §713.04, Applicant submits this summary of the telephone interview to record Applicant's understanding of the substance of the interview. If Applicant's understanding is inaccurate, notice of such is appreciated.

During the interview, Applicant's representative proposed an amendment of Claim 1 and explained that U.S. Patent No. 6,715,097 issued to Kidder, et al ("*Kidder*"), which was cited to support the rejection of the pending claims, does not disclose "downloading the executable file to a memory for a processor on the card without requiring the use of boot code on the card," as recited by Claim 1. Examiner Peyton stated that she understood the explanation provided by Applicant's representative in view of the portions of *Kidder* identified by Applicant's representative during the telephone conference, and wanted an opportunity to further review *Kidder* before determining allowability of the pending claims.

Section 103 Rejections

Claims 1-3, 8-13, 17-21, and 26-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kidder*. To clarify various aspects of inventive subject matter, Applicant has amended Claims 1, 11, 20, and 26, and respectfully submits that the rejections of the pending claims are improper for reasons provided below.

Claim 1 is allowable over *Kidder* at least because *Kidder* does not disclose "downloading the executable file to a memory for a processor on the card without requiring

the use of boot code on the card,” as recited by Claim 1. For example, see column 13, lines 37-43 of *Kidder*. Thus, Claim 1 is allowable. Favorable action is requested.

For analogous reasons, Claims 11, 20, and 26 are allowable. Favorable action is requested.

As depending from their respectively allowable independent Claims 1, 11, 20, and 26, dependent Claims 2-10, 12-19, 21-25, 27, and 28 are also allowable. Claim 3 is allowable also because *Kidder* doesn't show “holding the processor while downloading the executable file and releasing the processor subsequent to downloading the executable file,” as recited by Claim 3. The Office Action concedes that such a limitation is not shown in *Kidder*, but nevertheless asserts that it would have been obvious to implement such a limitation without providing any document supporting such an assertion. Applicant respectfully submits that such a rejection, which amounts to a rejection based on an assertion of “common knowledge,” is improper according to M.P.E.P., § 2144.03 [R-1]. For example, § 2144.03 (A) states that “it is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.” [emphasis added] Because Claim 3 is rejected based only on this implied assertion of common knowledge, which is the principal evidence upon which the rejections are based, the rejections of Claim 3 is improper. Thus, Claim 3 is allowable, and for analogous reasons, Claims 13 and 20 are also allowable. Favorable action is requested.

If the Examiner continues to maintain her rejection of Claim 3 based on this reasoning, then Applicant hereby requests the Examiner to provide documentary evidence in the next Office Action, as stated in Section 2144.03(C) of M.P.E.P. Further, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, Applicant hereby requests that the Examiner provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. (See Section 2144.03(C)-M.P.E.P.).

#### **Information Disclosure Statement**

Applicant notes for the Examiner's convenience that an Information Disclosure Statement (IDS) and a PTO form 1449 identifying the references disclosed in the IDS are filed with this Response. Applicant respectfully requests that the Examiner confirm in her next written communication that the Examiner has considered Applicant's Information Disclosure Statement by initialing next to each reference identified in the PTO form 1449.

**New Claims**

Claim 29 is allowable over *Kidder* at least because *Kidder* does not teach or suggest “while preventing the processor from accessing the memory, causing the executable file to be stored in the memory; and executing the executable file using the processor,” as recited by Claim 29. As depending from allowable independent Claim 29, dependent Claims 30 and 31 are also allowable. Favorable action is requested.

CONCLUSION


Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

If the Examiner feels that prosecution of the present Application may be advanced in any way by a telephone conference, the Examiner is invited to contact the undersigned attorney at 214-953-6486.

A check in the amount of \$132.00 is enclosed to cover the fee associated with one (1) new independent claim and two (2) new dependent claims, and a check in the amount of \$180.00 is enclosed to cover the fee associated with the submission of an Information Disclosure Statement. Applicant does not believe that any other fees are due. However, the Commissioner is hereby authorized to charge these fees and any extra fee or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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